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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

RONALD KIRSH, Plaintiff, Cross-defendant and Appellant, v. ANDREW TODD KIRSH, Defendant, Cross-complainant and Respondent.	B275276 (Los Angeles County Super. Ct. No. BC530501)

APPEAL from a judgment of the Superior Court of Los Angeles County, Victor E. Chavez, Judge. Affirmed.

JDavid Law Practice and Jill S. David for Plaintiff, Cross-defendant and Appellant.

Klapach & Klapach, Joseph S. Klapach; DeCastro, West, Chodorow, Mendler, Glickfeld & Nass and Jerry L. Kay for Defendant, Cross-complainant and Respondent.

Ronald Kirsh and his son Andrew Kirsh[1] entered into a partnership to buy and to develop real property. When Andrew discovered that Ronald had been mismanaging the properties, Andrew hired an accountant to manage the properties. Ronald sued his son, and Andrew cross-complained. The matter was bifurcated into a jury trial on legal claims, including breach of contract and breach of fiduciary duty, and a court trial for equitable relief, namely, dissolution of the partnership. The jury found in Andrew's favor on all causes of action. At the bench trial, the parties agreed to dissolve their partnership. The trial court, after finding that Ronald's liabilities exceeded his equity interest in the partnership, ordered his interest in the properties transferred to Andrew.

On appeal, Ronald contends the trial court abused its discretion by admitting evidence of his prior felony conviction, the jury's special verdict was ambiguous, and the trial court erred by ordering Ronald to transfer his interest in the properties to Andrew.[2] We reject these contentions and affirm the judgment.

BACKGROUND

I. Ronald and Andrew form a partnership

Ronald and his wife Paula had a son, Andrew. In 2000, Andrew was admitted to the California bar, and he became a real estate transactional attorney.

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[1] We refer to the Kirshs by their first names for the sake of clarity, intending no disrespect.

[2] Although Paula Kirsh is listed on the briefs as an appellant, only Ronald filed a notice of appeal.

In 2003, Ronald and Andrew formed an oral partnership to invest in real estate. They agreed to be 50/50 partners, splitting profits equally. Ronald, who had experience in real estate and in managing apartment buildings, was responsible for locating properties to buy, remodeling and maintaining them, collecting rent, and paying expenses, including taxes and loan installments. Andrew obtained financing and handled legal work for the partnership, including creating operating agreements for limited liability companies to hold the properties. Andrew and Ronald agreed not to receive a fee for their respective roles.

From 2003 to about 2010, the partnership acquired eight small multi-unit properties in Los Angeles: 21st Street, New Hampshire, Hyperion, Gramercy, Rampart, Vanowen, Benton Way, and Portia.[3] To buy the properties, Andrew took out loans in his name or personally guaranteed loans. Over the years, Andrew also took out home equity lines of credit to finance the properties.

Saying that he had bad credit, Ronald told Andrew to either take title to the properties alone or to form an entity to take title, which entity Andrew would control. To that end, Andrew created a limited liability company for each property. He formed, for example, ATK Premier Properties, LLC (ATK I) to hold title to 21st Street. ATK I's operating agreement designated Andrew as its sole member and manager. Thereafter, Andrew formed sequentially numbered limited liability companies to hold each property, i.e., ATK Premier Properties II–VII. As with 21st

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[3] Portia, title to which was held by ATK Premier V, LLC, was the only property with a third investor. Ronald and Andrew each had 37.5 percent interests in Portia and the third investor had a 25 percent interest.

Street, Andrew was the sole member and manager of each limited liability company. Later, during litigation, Andrew learned why Ronald did not want to be a member of any entity or to hold title to property: in 1996, Ronald was convicted of a felony for making a false statement to a financial institution and ordered to pay $1.7 million in restitution, which remained unpaid.

II. Ronald's mismanagement of the properties

Over the years, Andrew would see checks written on ATK accounts to Ronald with a "reimbursement" notation on them. Ronald explained he was reimbursing himself for property expenditures, including property taxes, he had paid from his personal account. Andrew repeatedly admonished his father to pay expenses from the ATK accounts.

In late 2010, Ronald stopped making payments on loans and reassured Andrew that their lender, who was a family member, was going to be patient with them in the hope the properties could be refinanced. Notwithstanding that the ATK entities were not paying down the loans, the properties were experiencing a cash flow problem—there was no money in ATK bank accounts. To address the problem, Andrew sold Vanowen in 2010 and used the $250,000 sale proceeds to pay expenses on other properties.

There were other issues. Since the partnership's formation, property tax bills had gone to Ronald, who was supposed to pay them. However, in 2012, while trying to sell Benton Way, Andrew learned Ronald had not paid $35,000 to $40,000 in property taxes. Concerned about his father's mismanagement of the properties, Andrew, with Ronald's consent, hired an accountant to run the day-to-day operations of the limited

liability companies. Even so, in 2014, the County of Los Angeles sent Andrew a notice of tax lien sales for failure to pay property taxes of almost $100,000 for Portia and about $68,000 for Rampart from 2008 to 2012. Andrew later learned that Ronald had redacted the outstanding delinquent taxes from property tax bills before forwarding them to the accountant.

In addition to failing to pay property taxes, Ronald did not pay over $80,000 in utility expenses for some of the properties. Further, Ronald's failure to perform repairs to some of the properties caused the city to place them in its rent escrow account program, meaning that rents had to be paid directly to the city.

By 2014, Andrew had sold Gramercy, 21st Street, Vanowen, and Benton Way. He used all sale proceeds to pay off the ATK entities' debt. Andrew had to provide additional, personal funds to pay off debt.

III. The Idaho property

In 2006, Andrew bought a multi-unit apartment building on Idaho and lived there. He paid for everything in connection with the property, except an ATK entity paid the interest-only portion of a second mortgage. Andrew viewed Idaho as his personal property, although Ronald claimed at trial it belonged to the partnership.

IV. The Playa Vista property

In 2006, Andrew agreed to be the named borrower on loans to finance a house for his parents. Although Ronald and Paula were supposed to pay the mortgages, Ronald stopped paying them. Andrew discovered the default when his loan application to buy a house was denied. He later learned during discovery

that Ronald had forged Andrew's signature on a $6,411.48 check drawn against Andrew's personal account to make a mortgage payment. Ronald also made mortgage payments on Playa Vista from ATK I's account. Unable to cover Playa Vista's mortgage payments *and* to save the ATK properties, Andrew allowed the foreclosure of the Playa Vista property to proceed.

V. Expert testimony

Andrew's forensic fraud expert, Jennifer Ziegler, reviewed bank accounts, bank statements, loan documents, checks, deposit slips, ATK tax returns and financial statements, the work of ATK's accountant, and filings in the lawsuit between Ronald and Andrew. She discovered that some of the money Ronald claimed was his capital contribution actually came from Andrew's line of credit. Based on her forensic analysis, she concluded that Ronald took $1,349,700 out of the ATK entities and ultimately owed Andrew $866,475.

Ronald agreed he owed Andrew money but in the lesser amount of either $182,363 or $262,113.

VI. Ronald sues Andrew, who cross-complains

In 2013, Ronald sued Andrew and the ATK limited liability companies for declaratory relief, legal malpractice, breach of fiduciary duty, and financial elder abuse. Ronald alleged that his "wicked son" used his lawyering skills to draft legal documents that benefitted Andrew alone. "Rather than correctly documenting their relationship," which entitled Ronald to 50 percent of net profits from the sale of properties, Andrew instead formed limited liability companies, giving himself "absolute control over" Ronald's finances. Ronald further alleged that Andrew refused to pay him his share of proceeds from the

sale of Benton Way and Gramercy and that he was owed a fee for managing the properties. In his financial elder abuse cause of action, Ronald alleged that Andrew's actions caused Ronald and Paula to lose their Playa Vista home. Ronald asked for dissolution of the partnership and sale of the partnership properties, except Portia, and for an accounting.

Andrew and the ATK entities cross-complained against Ronald and Paula for breach of contract, fraud, breach of fiduciary duty, accounting, conversion, and declaratory relief. Andrew agreed he and his father entered into the partnership and were supposed to split profits 50/50 but denied Ronald was entitled to a management fee. Andrew alleged that Ronald diverted income from the ATK entities for Ronald's personal use, mismanaged the properties, and concealed his wrongdoing. Ronald lied to Andrew about being a licensed real estate agent, when in fact Ronald could not get a license because of a felony conviction. Ronald also induced Andrew to help him buy the Playa Vista property, telling Andrew that he would pay the mortgage if Andrew agreed to take title to the property. Andrew asked for a declaration as to which party's understanding of the partnership agreement was correct and that the Idaho property was not part of the partnership.

VII. The bifurcated proceedings and verdicts

In October and November 2015, the matter was tried in two phases: a three-week jury trial on legal claims and a subsequent half-day court trial on the equitable claims. Before trial, the trial court dismissed the claims of all corporate defendants except ATK Premier V, because they had been suspended or cancelled. During trial, the trial court granted Ronald's motion for nonsuit as to the remaining ATK entity, ATK Premier V, on the ground

there had been no testimony concerning damages to that entity.[4] The trial court also granted a nonsuit motion as to Ronald's elder abuse cause of action and Andrew's fraud cause of action against Paula.

A. *The jury trial and special verdicts*

The matter therefore went to the jury on Ronald's legal malpractice and breach of fiduciary causes of action and on Andrew's cross-complaint. The jury found against Ronald on his legal malpractice and breach of fiduciary duty causes of action and found that the Idaho property was not part of the partnership.

The jury found for Andrew for breach of contract and false representation and awarded him $1 on each of those causes of action. The jury also found that Ronald breached a fiduciary duty owed to Andrew and awarded Andrew $261,998 on that cause of action. The jury further found that Ronald acted with malice and oppression but did not award punitive damages to Andrew.

B. *The court trial and judgment*

The matter then proceeded to a court trial on the equitable causes of action for declaratory relief, accounting, and dissolution of the partnership. The parties stipulated to the dissolution of their partnership. Two experts testified to the value of the remaining four partnership properties (New Hampshire, Hyperion, Portia, and Rampart) as of January 2015. Ronald's

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[4] There is no challenge on appeal to the dismissal of the corporate entities.

expert valued the properties at $6,425,000. Andrew's expert valued the properties similarly, at $6,115,000.

After the bench trial, the trial court issued written tentative findings and rulings, which it later adopted in its judgment. The trial court ordered the partnership dissolved. Noting that there was only a 5 percent deviation between the competing experts' valuations of the properties, the trial court accepted the average of the two valuations as the basis of the value of each property and total net equity of the partnership. The partnership's total net equity was $2,180,873; thus Ronald and Andrew each had an equity interest of $1,090,436.50. However, the trial court also found credible the testimony of Andrew's forensic expert that Ronald improperly "recycled partnership money"[5] and misappropriated Andrew's personal money, which he then passed off as his partnership contribution. Based on that forensic analysis, the trial court found that Ronald owed Andrew $866,475 plus the jury's award of $262,000, for a total owed of $1,128,475. The amount Ronald owed thus exceeded his equity partnership interest and left Ronald still owing Andrew $38,038.50 ($1,128,475 minus $1,090,436.50). The trial court therefore also ordered all of Ronald's "right, title and/or interest in and to the Partnership and his 37.5% membership interest in" ATK Premier V transferred, sold or assigned to Andrew.

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[5] By this, the expert meant that Ronald misappropriated partnership funds and put them back into the partnership, as if they were his independent capital contribution.

DISCUSSION

I. Admission of Ronald's felony conviction

Ronald contends that the trial court abused its discretion by failing to exclude his felony conviction under Evidence Code[6] sections 352 and 1102. We disagree.

A. *Additional background*

Before trial, Ronald moved in limine to preclude evidence of his 1996 felony conviction for making a false statement to financial institutions (18 U.S.C. § 1014) on the ground it was substantially more prejudicial than probative under section 352 and that it constituted improper character evidence. Andrew argued in opposition that he took out loans in his name and did not make Ronald a member of the limited liability companies at Ronald's instruction because Ronald said he had bad credit. But Ronald neglected to inform Andrew that he had a felony conviction and an accompanying $1.7 million restitution order, which gave him a motive to hide assets. Had Andrew known the true facts, he would not have entered into business with his father or agreed to be the borrower on loans benefitting his parents. Also, the conviction rebutted Ronald's claim that Andrew violated various duties owed to Ronald by failing to identify Ronald as a member and manager of the companies. Finally, the conviction went to Ronald's credibility. Andrew thus argued that the conviction, notwithstanding its remoteness in time, was probative and would consume merely an hour of trial time.

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[6] All further statutory references are to the Evidence Code unless otherwise indicated.

Based on this showing, the trial court denied Ronald's motion. When Ronald's counsel asked the trial court to demonstrate it had engaged in a balancing test under section 352, the trial court said it would address the issue further at trial. Later, Ronald's counsel objected to the conviction being raised during voir dire, and the trial court overruled the objection. Then, just before Andrew's counsel gave his opening statement, Ronald's counsel argued that any statement should reference only the fact of the conviction and not the accompanying restitution order. Andrew's counsel responded that the conviction and restitution order explained why Ronald did not want assets in his name, so the evidence went to Ronald's credibility, motive, and scheme. The trial court told counsel to limit the evidence only to that which was "integral" and not to dwell on it or to use it to "discredit" Ronald. Thereafter, Andrew's counsel referenced Ronald's felony conviction and restitution order in his opening statement and, as we discuss in further detail later, questioned witnesses about the conviction.

B. *The trial court did not abuse its discretion*

Evidence of a person's prior criminal act is generally inadmissible to prove he or she has a propensity to engage in criminal conduct on another occasion. (§ 1101, subd. (a).) But such evidence may be admissible if it is relevant to prove, for example, intent, plan or motive. (§ 1101, subd. (b); *People v. Ewoldt* (1994) 7 Cal.4th 380, 393.) When reviewing the admission of evidence of other offenses, a court must consider the materiality of the fact to be proved or disproved and the probative value of the other crimes evidence to prove or disprove the fact. (*People v. Fuiava* (2012) 53 Cal.4th 622, 667.)

Even if other crimes evidence is admissible under section 1101, subdivision (b), a trial court has discretion to exclude the evidence under section 352 if its probative value is substantially outweighed by undue prejudice. (*People v. Scott* (2011) 52 Cal.4th 452, 490–491; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1685.) But the prejudice section 352 contemplates does not include evidence that is merely inconvenient or evidence that undermines the opponent's position or shores up that of the proponent. (*Scott*, at p. 490.) Rather, evidence is prejudicial under section 352 if it uniquely tends to evoke an emotional bias against a party as an individual or would cause the jury to prejudge a person on the basis of extraneous factors, and has little effect on the issues. (*Scott*, at p. 491.) We review a trial court's rulings under sections 352 and 1101 for abuse of discretion. (See, e.g., *Boeken*, at p. 1685.)

We discern no abuse of discretion. Ronald's felony conviction and accompanying restitution order were relevant to prove facts other than his disposition to commit crimes. (§ 1101, subd. (b).) Specifically, Ronald alleged in his causes of action that Andrew did not name Ronald as a member of the limited liability companies and put everything in Andrew's name in order to control the business and Ronald's finances, all in violation of duties Andrew owed to Ronald. Ronald's felony conviction and restitution order were evidence that Ronald's allegations were false. That is, Ronald did not want to be a member of the ATK entities or to hold property in his name because, otherwise, the property could be attached to satisfy the restitution order. Thus, the evidence was relevant to Ronald's intent, motive, and plan. Moreover, Ronald's conviction was probative to his credibility.

(*Boeken v. Philip Morris, Inc.*, *supra*, 127 Cal.App.4th at p. 1685; *People v. Mendoza* (2000) 78 Cal.App.4th 918, 924–925; § 788.)

Notwithstanding the highly probative nature of the evidence, Ronald contends the trial court abused its discretion under section 352. He first suggests that the trial court failed to weigh the probative nature of the evidence against its prejudicial impact as the section requires. The suggestion is meritless. The parties fully briefed the issue in writing, and the trial court said it had read all documents. Thus, the trial court stated simply at the hearing on the motion that it was "denied." This experienced trial court's verbal concision in no way shows it failed to engage in the weighing process. Although the record must affirmatively show that the trial court weighed prejudice against probative value in admitting evidence of a prior bad act, the trial court need not expressly do so or make an express statement it has done so. (*People v. Crittenden* (1994) 9 Cal.4th 83, 135.) Still, the trial court here expressly engaged in the weighing process when Ronald renewed his objection before Andrew's opening statement. At that time, the trial court noted that the "consequence" of the conviction, i.e., the restitution order, was relevant to certain factual issues. The record thus clearly shows that the trial court engaged in the requisite weighing.

Next, Ronald argues that the conviction was substantially more prejudicial than probative because it was about 19 years old and it concerned loans Ronald took out in the 1990's and not the loans connected to the partnership properties. First, if the conviction's probative value only went to Ronald's credibility, his argument about remoteness might be more persuasive. But, as we have said, the conviction had other probative value: it directly contradicted Ronald's theory of his case. In any event,

even a fairly remote, 20-year-old prior conviction may be admissible. (*People v. Mendoza*, *supra*, 78 Cal.App.4th at pp. 925–926.) Also, even if the felony conviction were remote, the *unpaid* restitution order was not, given that the order was outstanding at the time of trial.

Ronald's second argument that the conviction lacked probative value because it concerned loans not at issue in this case misses the point. Ronald told Andrew to structure their partnership in a certain way to avoid paying off the restitution order. Ronald's exclusion from the ATK entities thus was a deliberate attempt by Ronald to avoid satisfying his creditors and *not* a matter of Andrew's malpractice or breach of fiduciary duties. Indeed, other evidence showed that Ronald did not want property in his name, because he put his house, cars, and horses in Andrew's name.

Finally, Ronald argues that Andrew raised the conviction and restitution order in bad faith at trial, demonstrating Andrew's intent to characterize Ronald as a liar and a thief rather than to establish motive. The trial court was well within its broad discretion to reject this argument.

As we have found no error in admitting the evidence, we need not address whether Ronald suffered a miscarriage of justice as a result. Even so, our review of the record shows that Andrew's focus on this issue was appropriately limited by the trial court. While cross-examining Ronald, Andrew's counsel asked about the felony twice. First, he established the fact of the conviction and that the restitution order had not been satisfied.[7]

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[7] Counsel marked the judgment of conviction as an exhibit but it was not admitted.

The second time, counsel asked Ronald if he had told Andrew and a lender about the conviction and restitution order before litigation. Ronald answered, "No." When counsel asked whether there was $1.7 million outstanding on the restitution order, the trial court sustained Ronald's objections.

Then, Andrew's counsel asked Ronald's legal malpractice expert whether she had considered Ronald's felony conviction and restitution order in forming her opinion. Ronald's objection was sustained. Andrew's counsel asked if she had read Ronald's deposition testimony admitting he had never told Andrew about his felony conviction, and, over Ronald's objection, she answered that she did not recall. The trial court further sustained objections during the testimony of another lender, Robert Brill, about whether Ronald told him he had been convicted of a felony and was ordered to pay restitution. Finally, in closing, defense counsel briefly referred to Ronald's felony conviction: "You don't need just a felony conviction to know that this guy doesn't tell the truth. But the motive and the only relevance to the restitution order is that he didn't want to show anything in his own name."

Counsel's inquiry into Ronald's conviction and the restitution order was thus limited and within the parameters of any limiting order. There being no error in admitting the evidence, we need not consider Ronald's arguments about prejudice further.[8]

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[8] The trial court instructed the jury, "You have heard that a witness in this trial has been convicted of a felony. You were told about the conviction to help you decide whether you should believe the witness. You must not consider it for any other purpose." Ronald objected to the instruction. Although Ronald complains on appeal that the instruction was "improper," any

II. Special verdict

Ronald next contends that the special verdict failed to resolve every controverted issue because although the jury was instructed about damages to the ATK entities, the special verdict made no provision for such damages. The first problem with this contention is that Ronald fails to cite jury instructions concerning damages to the ATK entities, and our review of this voluminous record does not show that the jury was instructed as to such damages. Even if such an instruction were given, it would not render the special verdict ambiguous or inconsistent. (See generally *Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1092 [special verdict inconsistent if cannot reconcile findings].) The special verdict unambiguously awards damages to just Andrew.

Also, by the time the case went to the jury, the ATK entities had already been dismissed. Even so, had Ronald wanted any damages to the ATK entities to be segregated, then he should have asked for such a delineation in the verdict forms.[9] (See generally *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1158.) The record, however, does not show that Ronald objected to the special verdict forms on this ground either before they

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error in the instruction benefitted him. It limited the jury's consideration of the evidence to the issue of credibility, even though it was relevant to broader issues, as we have explained.

[9] Ronald appears to suggest that the special verdict led to a double recovery to Andrew because Ronald was ordered in the dissolution part of the trial to pay additional monies to Andrew for which the jury had already compensated him. His attack on the special verdict, however, is insufficient to raise any issue regarding double recovery.

went to the jury or after the jury returned its verdict. Failure to object to a verdict before discharging the jury and to request clarification or further deliberation precludes a party from later questioning the validity of that verdict if the alleged defect was apparent at the time the verdict was rendered and could have been corrected. (See *Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 263.)

In addition, the parties and trial court discussed the special verdict forms off the record. However, Ronald has not provided a settled or agreed statement of those discussions, which might bear on this issue or show that he asked that the forms be modified to include damages for the ATK entities, or perhaps that he did not want them on the special verdict forms. (See generally Cal. Rules of Court, rules 8.130, 8.134, 8.137.) It being the appellant's burden to provide an adequate record to assess a claim of error, the issue is forfeited. (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.)

III. Dissolution of the partnership

At the bench trial, the parties stipulated to dissolve their partnership. The trial court, instead of ordering the properties sold, ordered Ronald to transfer his interest in them to Andrew. Ronald contends this was error because the Corporations Code required the properties to be sold. He further argues that the trial court improperly valued the property as of January 2015 instead of as of the trial in October and November 2015. We reject both contentions.

A. *Dissolution*

Ronald relies on the Uniform Partnership Act, specifically Corporations Code section 16807, to support his argument that

the trial court erred by not ordering a sale of the remaining partnership properties. Corporations Code section 16807, subdivisions (a) and (b) provides that in winding up a partnership's business, the partnership's assets are sold and used to pay debts. Profits and losses are then credited to each partner's account. (See generally *Corrales v. Corrales* (2011) 198 Cal.App.4th 221, 227.) An exception to this general rule requiring a sale of partnership assets applies where there is no partnership debt. Where there is no partnership debt, a division in kind may be fairly and equitably made. (*Harper v. Lamping* (1867) 33 Cal. 641, 649; *Vasiljevich v. Radanovich* (1934) 138 Cal.App. 97, 100; see *Watterson v. Knapp* (1939) 35 Cal.App.2d 283, 287–288.)

Here, by Ronald's design, there was no *partnership* debt. The partnership did not hold title to the properties; the ATK limited liability companies did. The partnership did not borrow money or guarantee loans to finance the purchase of the properties, Andrew borrowed the money and guaranteed the loans. Andrew, not the partnership, held the debt. Thus, the trial court was not obligated to follow Corporations Code section 16807 and could instead make other equitable orders. (See generally *Bechtel v. Wier* (1907) 152 Cal. 443, 446; *Heller v. Pillsbury Madison & Sutro* (1996) 50 Cal.App.4th 1367, 1392.) Given that Ronald's liabilities exceeded his interest in the partnership, we cannot say that the trial court, sitting in equity, abused its discretion by declining to order the sale of the properties and by declaring them to be Andrew's sole property.

Finally, to the extent Ronald argues that the trial court's decision improperly rested on the "highly suspect" testimony of Andrew's forensic expert Jennifer Ziegler, the argument is

nothing more than an improper attack on the credibility of witnesses and the evidence. Witness credibility was a matter for the trial court, sitting as trier of fact during the dissolution proceedings, and we may not on appeal make credibility determinations or reweigh the evidence. (*Axis Surplus Ins. Co. v. Reinoso* (2012) 208 Cal.App.4th 181, 189.)

B. *Valuation date*

Next, the trial court, over Ronald's objection that hundreds of thousands of dollars were at stake, precluded questions at the November 2015 bench trial about the properties' current market value. Citing *Kennemur v. State of California* (1982) 133 Cal.App.3d 907, the trial court instead limited the experts to the valuation figures expressed at their depositions earlier that year in January.[10] As we explain, the trial court acted within its discretion.

Kennemur v. State of California, *supra*, 133 Cal.App.3d at pages 919 to 920 held that an expert's trial testimony may not exceed the scope of his or her deposition testimony if the opposing party has no notice or expectation the expert will offer new testimony, or if notice of the new testimony comes when deposing the expert would be unreasonably difficult. (See *Easterby v. Clark* (2009) 171 Cal.App.4th 772, 780.) *Jones v. Moore* (2000) 80 Cal.App.4th 557 (*Jones*) illustrates the point. In *Jones*, a legal malpractice case, an expert witness testified at trial, consistent

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[10] In connection with this contention, Ronald also argues that the trial court improperly granted Andrew's motion in limine to exclude appraisal evidence relating to the properties. That motion, however, had nothing to do with what valuation date would control.

with his deposition, that the defendant fell below the applicable standard of care during a specific time period. The trial court prevented the expert from testifying about the defendant's conduct during a different time period, finding that the proposed testimony was outside the scope of the expert's deposition. (*Id.* at p. 564.) *Jones* found that while the expert witness's declaration arguably was broad enough to encompass the line of questioning, the expert had expressly stated in his deposition that he would notify defense counsel before offering any new opinions. Under these circumstances, excluding testimony that went beyond opinions expressed during deposition was justified. (*Id.* at pp. 564–565.)

The record here does not show, as did the record in *Jones*, *supra*, 80 Cal.App.4th 557, whether Ronald's valuation expert said he would limit his opinion to the January 2015 valuation and would notify opposing counsel if he expanded his opinion.[11] Still *Jones* is instructive, because the principle underlying that case is fairness. Thus, while the broad subject of the expert's deposition and trial testimony in this case was the same—the value of the properties—the time period about which the expert wanted to testify at trial was different than the one he testified to at his deposition. However, when the trial court asked Ronald's counsel whether he made any attempt to take or offer the expert's deposition, counsel said he hadn't. The trial court therefore precluded the testimony. In doing so, we cannot find that the trial court abused its discretion by limiting the parties to the

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[11] However, Ronald did move in limine before trial for an order preventing Andrew from introducing any evidence at trial that was not produced in response to pretrial discovery served by plaintiff.

January 2015 valuations. Evidentiary rulings are committed to the trial court's sound discretion, as are questions of equity, such as assigning a date for valuing property. (*De Anza Enterprises v. Johnson* (2002) 104 Cal.App.4th 1307, 1316; see, e.g., *Dillingham-Ray Wilson v. City of Los Angeles* (2010) 182 Cal.App.4th 1396, 1403 [order limiting evidence proving claim is reviewed for abuse of discretion].)

In addition to the considerable discretion afforded trial courts in making evidentiary and equitable rulings, a party's improper tactics may factor into a court's equitable decisions. Courts have upheld rulings of trial courts precluding a partner from benefiting from conduct that impacts damages. In *Chazen v. Most* (1962) 209 Cal.App.2d 519, 524, for example, a partner delayed performing an accounting, to the copartner's detriment. The court held, "Where the accounting and distribution of partnership assets are delayed through the fault of the partner having possession, interest may be allowed from the date when the balance should have been ascertained and paid over." (*Ibid.*; see *Speka v. Speka* (1954) 124 Cal.App.2d 181, 186–187 [equities warranted award of interest to nonoffending partner].)

Here, the passage of time between the January 2015 depositions and the October to November 2015 trial was in part due to Ronald's conduct. Trial had been scheduled to start soon after January 2015, in March 2015. However, Ronald moved to have the trial set on a preferential basis, and Paula made a similar motion based on her age and health. The trial court therefore advanced the trial date to October 2014. Soon thereafter, the United States government served a notice of the lien. Based on ensuing settlement discussions, the trial court moved the trial date back to March 2015 at Ronald's request and

despite the prior request for trial preference. Thus, Ronald delayed trial.

Ronald engaged in other delaying tactics. He, for example, did not appear for his January 2015 deposition based on an alleged medical condition that precluded him from sitting for long periods and from driving from Palm Springs to Los Angeles without frequent breaks. The trial court therefore ordered Andrew to take Ronald's deposition on February 23, 2015 in Indio. Notwithstanding Ronald's claim he could not travel easily to Los Angeles, he was photographed in Los Angeles on February 17, 2015. On Andrew's application, the trial court (Judge Susan Bryant-Deason) ordered Ronald to appear for his deposition in Los Angeles and sanctioned Ronald and his counsel. Ronald did not appear for that court-ordered deposition because he claimed to be ill, although he made himself available later that week. By this time, trial had been moved to August 2015. But, when Ronald's counsel also claimed ill health, the trial court again continued trial to October 2015.

Thus, the balance of the equities favored using January 2015 as the valuation date to the extent Ronald delayed trial to gain advantage.[12]

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[12] At oral argument, Ronald's counsel argued that Andrew's accountant failed to provide records relevant to valuing the partnership. This was not raised in the briefs and is therefore forfeited.

DISPOSITION

The judgment is affirmed. Andrew Kirsh is awarded his costs on appeal.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.